Clean Source, Inc. *and* Wholesale Delivery Drivers, Salespersons, Industrial and Allied Workers, Local 848, International Brotherhood of Teamsters, AFL–CIO; Miscellaneous Warehousemen, Drivers and Helpers, Local 986, International Brotherhood of Teamsters, AFL–CIO. Case 21–CA–32869

March 31, 1999

DECISION AND ORDER

BY MEMBERS FOX, HURTGEN, AND BRAME

Pursuant to a charge and an amended charge filed on July 21 and July 31, 1998, respectively, the General Counsel of the National Labor Relations Board issued a complaint on December 21, 1998, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing Locals 848's and 986's request to bargain following the Locals' certification in Case 21–RC–19915. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel,* 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint and asserting affirmative defenses.

On February 8, 1999, the General Counsel filed a Motion for Summary Judgment. On February 10, 1999, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer and response, the Respondent admits its refusal to bargain but attacks the validity of the certification on two bases: (1) the inclusion of certain classifications within the unit that the Respondent now contends are supervisory[1] and (2) the Joint Petitioners never intended to jointly represent the unit employees and in any event, one of the two Joint Petitioners disclaimed interest in joint representation.

The Respondent's contentions with respect to the Joint Petitioners are based on postcertification incidents that were considered by the Regional Director. Specifically, on July 16, 1998, the Respondent filed a motion for revocation of the certification of the Joint Petitioners on the ground that Local 986, in correspondence dated June 17, 1998, had disclaimed interest in representing the unit. While that motion was pending before the Regional Director, Local 986 advised that its earlier correspondence concerning joint representation had been erroneous, was null and void, and that it had always been its intention to bargain jointly with Local 848. The Acting Regional Director found that the June 17 correspondence of Local 986 relied upon by the Respondent did not constitute a clear and unequivocal disclaimer of interest in jointly representing the unit. The Respondent's request for review of the decision of the Regional Director was denied. The Respondent's response to the Notice to Show Cause does not warrant a different result. Thus, none of the evidence relied on by the Respondent predates the election and certification or suggests a plan to conceal an intent not to jointly represent the unit. Compare: *Suburban Newspaper Publications,* 230 NLRB 1215 (1977).

Thus, all representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor do its contentions raise any special circumstances that would require the Board to reexamine decisions made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. *See Pittsburgh Plate Glass Co. v. NLRB,* 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a California corporation, with offices and a facility located at 5600 East Olympic Boulevard, City of Commerce, California, has been engaged in the wholesale distribution of chemical cleaning equipment and supplies for janitorial and industrial uses.[2] During the 12-month period ending March 18, 1998, the Respondent, including its business operations described above, purchased and received at its City of Commerce, California facility goods valued in excess of $50,000 directly from points outside the State of California.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7)

[1] The Respondent's answer denies par. 5 of the complaint, which sets forth the appropriate unit, on the ground that the senior driver and warehouse supervisor are supervisors within the meaning of the Act and, thus, should not be included in any unit considered appropriate for purposes of collective bargaining. We find that the Respondent's denial in this respect does not raise any litigable issue in this proceeding. Under the Board's Rules, the Respondent had the opportunity to litigate the unit issue in the representation proceeding. The Respondent, however, chose not to do so, and instead entered into a Stipulated Election Agreement which, inter alia, set forth the appropriate collective-bargaining unit and specifically included these classifications in that unit. By entering into this stipulation, the Respondent agreed that the unit described therein was appropriate. Accordingly, we find that the appropriate unit is as stated in the complaint and the Respondent's contentions at this stage of the proceeding do not present unusual circumstances which would warrant denial of the motion of the General Counsel.

[2] In its answer to the complaint the Respondent denies the location of its facility but admits all other aspects regarding its business operations including the essential commerce facts.

of the Act and that Locals 848 and 986 are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held April 15, 1998, Locals 848 and 986 were jointly certified on April 23, 1998, as the exclusive collective-bargaining representatives of the employees in the following appropriate unit:

> All warehousemen, drivers, senior driver, and warehouse supervisor employed by Respondent at its facility located at 5600 East Olympic Boulevard, City of Commerce, California; excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

Locals 848 and 986 continue to be the exclusive representatives under Section 9(a) of the Act.

B. Refusal to Bargain

Since December 8, 1998, Locals 848 and 986, by letter, have requested the Respondent to bargain and, by letter dated July 15, 1998, and continuing since December 15, 1998, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.[3]

CONCLUSION OF LAW

By refusing on and after July 15, 1998, to bargain with Locals 848 and 986 as the exclusive collective-bargaining representatives of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with Locals 848 and 986, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agents for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.,* 136 NLRB 785 (1962); *Lamar Hotel,* 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.,* 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

[3] Although the Respondent's answer denies a refusal to bargain, it is clear that it is challenging the continuing viability of the certification of the two locals and that its answer and its response do not present issues warranting a hearing.

ORDER

The National Labor Relations Board orders that the Respondent, Clean Source, Inc., City of Commerce, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Wholesale Delivery Drivers, Salespersons, Industrial and Allied Workers, Local 848, International Brotherhood of Teamsters, AFL–CIO; Miscellaneous Warehousemen, Drivers and Helpers, Local 986, International Brotherhood of Teamsters, AFL–CIO as the exclusive bargaining representatives of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with Locals 848 and 986 as the exclusive representatives of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

> All warehousemen, drivers, senior driver, and warehouse supervisor employed by Respondent at its facility located at 5600 East Olympic Boulevard, City of Commerce, California; excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in City of Commerce, California, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 21 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 15, 1998.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a re-

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

sponsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Wholesale Delivery Drivers, Salespersons, Industrial and Allied Workers, Local 848, International Brotherhood of Teamsters, AFL–CIO; Miscellaneous Warehousemen, Drivers and Helpers, Local 986, International Brotherhood of Teamsters, AFL–CIO as the exclusive representatives of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with Locals 848 and 986 and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

> All warehousemen, drivers, senior driver, and warehouse supervisor employed by us at our facility located at 5600 East Olympic Boulevard, City of Commerce, California; excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

CLEAN SOURCE, INC.